US ERA ARCHIVE DOCUMENT

#### TOWARDS A COMMON GOAL

Coordinating actions under the Clean Water Act (FWPCA) and the Endangered Species Act (ESA)



#### Memorandum of Agreement

- Signed by USCG, EPA, DOI, USFWS, NOAA & NMFS in July 2001
- Provides a framework for cooperation & participation among Services & Agencies
- Integrates ESA consultation with NCP requirements

## ESA Requirements

- Unlawful to take threatened and endangered species (Section 9)
- Each federal agency shall insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize endangered species continued existence (Section 7)
  - **Consultation**
  - Incidental take approval



# FOSC Statutory and Regulatory Authorities

- □ Clean Water Act FWPCA Sec. 311
- Oil Pollution Act of 1990 Sec. 4201&4202
- National Contingency Plan 40 CFR 300





#### The Process

- Inter-agency workgroup formed in February 2000
- Conducted an ESA Section 7(a) (1) review of the NCP and associated oil spill response activities.
- Select field comments sought on draft MOA in fall 2000
- MOA signed July 2001

#### MOA Overview

- Introduction & Purpose
- Legal Authorities & Definitions
- Procedures
  - Pre-Spill
  - Spill Response
  - Post Response
- Appendices
  - Flow charts
  - Checklist to initiate post-emergency consult
  - Planning Template
  - Sample PRFA language & consult documentation letters



#### What are the benefits?

- Proactive vs. reactive approach to ecosystem protection
- Develops a quality response plan
- Improves inter-agency coordination
- Helps meet mandates of both ESA and CWA in a comprehensive manner
- Incorporation of lessons learned ensures mistakes are not repeated

# Planning highlights

- Flexible approach
- Mainly informal using a process selected by the Area Committee
- Information needed for both ACP and ESA documentation
- Encourages Service involvement
- Faster response decision-making

# Pre-spill planning

FOSC requests endangered species expertise & species list from Services

> SSC/RRC may act as Service liaison,

No Action Required

NO

Species/habitat identified in area?

YES

Joint
"Working group"
formed
(Service & Area
Committee/RRT reps)

#### Informal Consultation/ ACP Planning Process

"Working group"
completes Appendix C
using ACP planning
process\*
\*Develop strategies with
minimal
adverse effect

Species/habitat still potentially adversely effected?

NO

Informal Consultation

Services provide concurrence letter Sec. 7(a)(2) req's fulfilled

YES Formal Consultation

Services utilize info developed in Appendix C to finalize formal consultation Sec. 7(a)(2) req's fulfilled

# Response highlights

- Spill response is an emergency
- ACP is basis for immediate response ops
- Service reps can be incorporated into Incident
   Command System as required
- Emergency continues until case is closed!
- Helps avoid impacts and post-spill consults







## Spill Response Procedures

**OIL SPILL** 

Notification occurs IAW NCP & ACP

Listed species/
critical habitat
potentially affected by
response ops?

Endangered species expertise not required

USFWS/NMFS Endangered species expertise required

YES

Emergency Consultation

USFWS/NMFS endangered species expertise provided to FOSC's Incident Command System USFWS/NMFS provide recommendations to minimize impact

Listed species/
critical habitat
anticipated affected by
response ops?

USFWS/NMFS continue to provide recommendations to avoid impact

NO YES

Initiation Package checklist completed (Appendix B)

FOSC closes case.
Emergency consultation ends

## Post Response Highlights

- Formal consult only after case is closed if required
- FOSC decides who completes package
- Provides legal protection to the FOSC
- Bio-opinion feedback in lessons learned as necessary

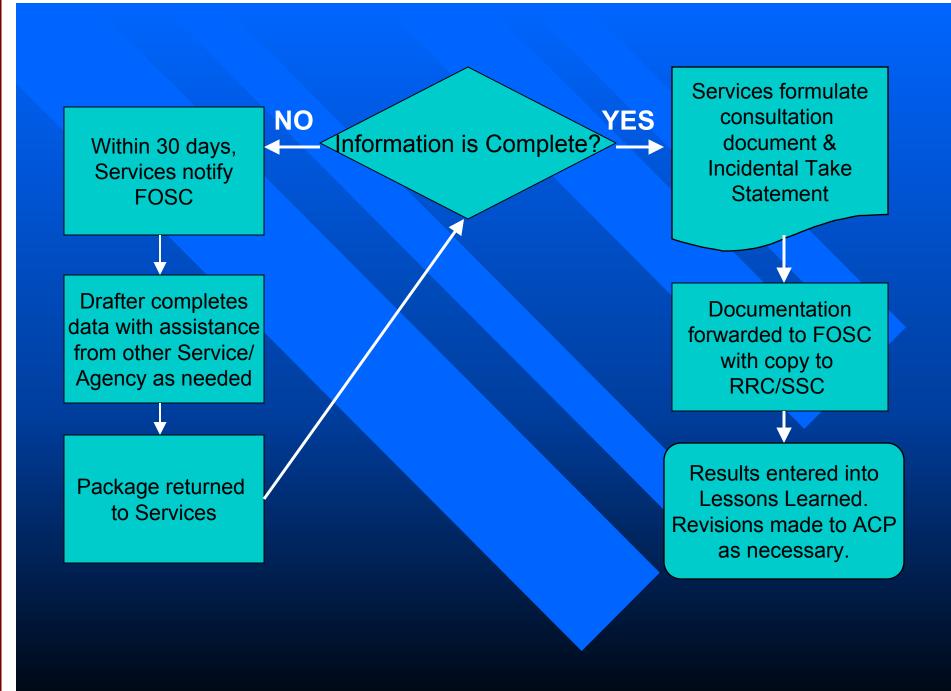
#### Post Response Procedures

Listed species/
critical habitat
adversely effected by
response ops?

Results entered into Lessons Learned. Revisions made to ACP as necessary.

Appendix B completed (RRC & SSC may act as liaison)

FOSC signs initiation package, cover letter requests consultation



#### What next?

- Workgroup developing training manual & presentation
- Training conducted at conferences, RRT meetings, resident training, etc.
- Area Committees (or RRT's) contact & work with Service reps
- ACPs amended & improved through normal review process
- Service participation in exercises is encouraged!

# Training Package

- CD Rom
  - Guidance manual
  - Sample letters, documents, etc.
  - Power point training (1-4 hours)
- Complete by April 2002
- Available for conferences, agency resident training, RRT training, etc.

